

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 350**

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**Introduced by Assembly Member Lieu**

February 19, 2009

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An act to add Division 21 (commencing with Section 60000) to the Financial Code, relating to debt.

### LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Lieu. Debt management and settlement.

Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for licensure and regulation by the Commissioner of Corporations of persons engaged in, among other activities, the business of receiving money as an agent of the obligor for the purpose of paying bills, invoices, or accounts for the obligor.

This bill would enact the Debt Settlement Services Act and would, commencing January 1, 2011, provide for the licensing and regulation by the commissioner of providers, defined as persons who provide, offer to provide, or agree to provide debt settlement services, as defined, directly or through others. The bill would require a provider to submit specified fees and an application for licensure with the commissioner. An applicant, *and any person who signs an application on behalf of an applicant*, who knowingly misrepresents or submits any material matter that is false, or *a person* who otherwise willfully violates a provision of the act, would be guilty of a misdemeanor. The bill would specify the conditions under which the commissioner may issue or deny licensure as a provider, would require renewal of a provider's license

on an annual basis, and would require a provider to satisfy certain requirements before entering into an agreement with an individual for the provision of debt settlement services, including providing specified disclosures. The bill would require an agreement for debt settlement services to contain specified terms and would impose limits on the fees charged by providers. The bill would prohibit providers from engaging in specified practices. The bill would authorize the commissioner to take enforcement actions against a provider for violations of the bill's provisions and would also authorize an injured individual to recover specified damages from a provider that violates the bill's provisions. The bill would enact other related provisions.

Because the bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Division 21 (commencing with Section 60000)  
2 is added to the Financial Code, to read:

3  
4 DIVISION 21. DEBT SETTLEMENT SERVICES ACT

5  
6 CHAPTER 1. SHORT TITLE

7  
8 60000. This division shall be known and may be cited as the  
9 Debt Settlement Services Act.

10  
11 CHAPTER 2. DEFINITIONS

12  
13 60001. As used in this division, the following definitions shall  
14 apply:

15 (a) "Agreement" means an agreement between a provider and  
16 an individual for the performance of debt settlement services.

1 (b) "Applicant" means any person who submits an application  
2 to the department for the purpose of seeking licensure to become  
3 a debt settlement provider.

4 (c) "Commissioner" means the Commissioner of Corporations.

5 (d) "Concessions" means assent to repayment of ~~a~~ *an unsecured*  
6 debt on terms more favorable to an individual than the terms of  
7 the contract between the individual and a creditor.

8 (e) "Debt settlement services" means services as an intermediary  
9 between an individual and one or more creditors of the individual  
10 for the purpose of obtaining concessions, but without receiving  
11 money from the individual for distribution to the individual's  
12 creditor.

13 (f) *"Financial analysis" means the review of an individual's*  
14 *budget and income and expenses in order to make a determination*  
15 *about the individual's qualification for a provider's debt settlement*  
16 *program.*

17 ~~(f)~~  
18 (g) "Good faith" means honesty in fact and the observance of  
19 reasonable standards of fair dealing.

20 ~~(g)~~  
21 (h) "Person" means an individual, corporation, business trust,  
22 estate, trust, partnership, limited liability company, association,  
23 joint venture, or any other legal or commercial entity. The term  
24 does not include a public corporation, government, or governmental  
25 subdivision, agency, or instrumentality.

26 ~~(h)~~  
27 (i) "Principal amount of the debt" means the amount of a debt  
28 at the time of the execution of the agreement.

29 ~~(i)~~  
30 (j) "Program" means a program or strategy in which a provider  
31 furnishes debt settlement services.

32 ~~(j)~~  
33 (k) "Provider" means a person that provides, offers to provide,  
34 or agrees to provide debt settlement services directly or through  
35 others. "Provider" does not include either of the following:

36 (1) The services of a person licensed to practice law in this state,  
37 when the person renders services in the course of his or her practice  
38 as an attorney-at-law.

39 (2) The services of a person licensed as a certified public  
40 accountant or a public accountant in this state, when the person

renders services in the course of his or her practice as a certified public accountant or a public accountant.

(3) A family member of an individual that negotiates financial concessions, with or without compensation, from the creditors of the individual.

~~(k)~~

(l) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

### CHAPTER 3. GENERAL PROVISIONS

60002. This division shall not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person’s business or profession:

(a) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors.

~~(b) A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or other financial institution, licensed under state or federal law.~~

~~(b) A bank, or other depository institution licensed under state or federal law, or its agent.~~

(c) A title insurer, escrow company, or other person that provides ~~bill-paying~~ *bill paying* services if the ~~provision of person does not provide~~ debt settlement services ~~is incidental to the bill-paying services.~~

~~(d) Financial planning~~ *Financial planning* services provided in a financial planner-client relationship by a member of a ~~financial planning~~ *financial planning* profession whose members the commissioner determines are licensed under Chapter 3 (commencing with Section 25230) of Part 3 of Division 4 of the Corporations Code.

60003. All fees collected by the commissioner pursuant to this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund upon appropriation by the Legislature.

60004. The commissioner may adopt rules and regulations necessary to implement this division in accordance with the

1 provisions of the Administrative Procedure Act (Chapter 3.5  
2 (commencing with Section 11340) of Part 1 of Division 3 of Title  
3 2 of the Government Code).

4  
5 CHAPTER 4. LICENSING  
6

7 60005. (a) No person shall provide debt settlement services  
8 to an individual who it reasonably should know resides in this state  
9 at the time it agrees to provide the services, unless the provider is  
10 licensed under this division.

11 (b) The commissioner shall maintain and publicize a list of the  
12 names of all licensed providers, which shall be published by the  
13 commissioner within 180 days of the operative date of this division.

14 60006. (a) An application for licensure as a provider shall be  
15 in a form prescribed by the commissioner.

16 (b) Subject to adjustment of dollar amounts pursuant to  
17 subdivision (a) of Section 60007, an application for licensure as  
18 a provider shall be accompanied by the following:

19 (1) The fee established by the commissioner.

20 (2) Evidence of a surety bond or minimum coverage of  
21 insurance, in an amount specified by the commissioner, which  
22 bond or insurance shall be maintained by the provider during the  
23 term of the license. *The bond shall state that it is held for the*  
24 *benefit of the individuals who contract for debt settlement services,*  
25 *and can be claimed under by those individuals and by persons*  
26 *acting with respect to this division on behalf of those individuals,*  
27 *including the commissioner, a district attorney, city attorney, or*  
28 *the Attorney General.*

29 (3) Proof that the applicant has filed appropriate documents  
30 with either the Secretary of State or the county in which the  
31 applicant is located to conduct a business in California.

32 60007. (a) The commissioner shall set an annual deadline for  
33 the submission of applications for licensure. The commissioner  
34 shall set, prior to the annual application deadline, based on its  
35 estimates of the cost of administering the program and the  
36 estimated number of license applicants, an application fee. Sixty  
37 days after the licensing deadline for the initial license, the  
38 commissioner shall determine, if necessary, a surcharge to cover  
39 the estimated costs for the remainder of the year, plus any deficit,  
40 if any, from the year prior, for administering this division. The

1 surcharge shall be charged as a pro rata share to each applicant  
2 granted a license during that year based on the number of active  
3 enrolled California residents in that licensee's debt settlement  
4 program, with a reasonable minimum and maximum charge as  
5 determined by the commissioner.

6 (b) The commissioner shall notify each licensee by mail of the  
7 amount of the surcharge assessed against it and that the amount  
8 shall be paid within 30 days thereafter. If the licensee fails to pay  
9 the assessment on or before the 30th day upon which payment is  
10 due, the commissioner may by order summarily suspend or revoke  
11 the license issued to the licensee.

12 (c) Any applicant that files its application after the deadline  
13 shall be charged the initial application fee plus the pro rata  
14 surcharge specified in subdivision (a), and the application fee for  
15 that applicant shall not be adjusted to account for any partial year.

16 60008. Every application for licensure shall be signed by the  
17 applicant and shall declare as true any material matter pursuant to  
18 this application for licensure. Any applicant, *and any person who*  
19 *signs an application on behalf of an applicant*, who knowingly  
20 misrepresents or submits any material matter that is false is guilty  
21 of a misdemeanor. The application form shall contain a statement  
22 informing the applicant that a false or dishonest answer to a  
23 question may be grounds for denial or subsequent suspension or  
24 revocation of the applicant's license. An application for licensure  
25 shall be in a form prescribed by the commissioner and shall include  
26 the following:

27 (a) The applicant's name, principal business address and  
28 telephone number, and all other business addresses in this state,  
29 e-mail addresses, and Internet Web site addresses.

30 (b) All names under which the applicant conducts a debt  
31 settlement business or a business for which licensure by the  
32 Department of Corporations is required.

33 (c) The address of each location in this state at which the  
34 applicant shall provide debt settlement services or a statement that  
35 the applicant will have no such location.

36 (d) The name and home address of each executive officer and  
37 director of the applicant and each person that owns at least 10  
38 percent of the applicant.

39 (e) A statement describing, to the extent it is known or should  
40 be known by the applicant, any material civil or criminal judgment

1 relating to financial fraud or misuse and any material administrative  
2 or enforcement action by a governmental agency relating to  
3 financial fraud or misuse in any jurisdiction against the applicant,  
4 any of its officers, directors, owners, or agents.

5 (f) Evidence of accreditation or certification by an independent  
6 accrediting or certification organization approved by the  
7 commissioner. If the applicant has not had the opportunity to obtain  
8 accreditation or certification, the applicant shall provide proof of  
9 registration with a recognized accrediting or certifying organization  
10 along with a schedule under which it plans to obtain accreditation  
11 or certification. The applicant shall obtain accreditation or  
12 certification within six months of the date of its application.

13 (g) At the applicant's expense, via the process in Section 60009,  
14 the results of a national criminal history records check, including  
15 fingerprints, provided pursuant to the Federal Bureau of  
16 Investigation appropriation of Title II of Public Law 92-544 (28  
17 U.S.C. Sec. 534) conducted within the immediately preceding 12  
18 months, covering every executive officer of the applicant. The  
19 commissioner shall be the authorized agency to receive information  
20 regarding the results of the national criminal history records check  
21 under Title II of Public Law 92-544 (28 U.S.C. Sec. 534).

22 (h) Any other information that the commissioner reasonably  
23 requires *to determine whether* to issue a license.

24 60009. (a) An applicant for licensure shall provide to the  
25 commissioner, and the commissioner shall submit to the  
26 Department of Justice, fingerprint images and related information  
27 required by the Department of Justice of applicants for licensure  
28 for purposes of obtaining information as to the existence and  
29 content of a record of state or federal convictions and state or  
30 federal arrests and also information as to the existence and content  
31 of a record of state or federal arrests for which the Department of  
32 Justice establishes that the person is free on bail or on his or her  
33 own recognizance pending trial or appeal.

34 (b) The Department of Justice shall provide a response to the  
35 commissioner pursuant to paragraph (1) of subdivision (p) of  
36 Section 11105 of the Penal Code.

37 (c) The commissioner may request from the Department of  
38 Justice subsequent arrest notification service, as provided pursuant  
39 to Section 11105.2 of the Penal Code, for a person described in  
40 subdivision (a).

1 (d) The Department of Justice shall charge a fee, to be paid by  
2 an applicant for licensure, that is sufficient to cover the cost of  
3 processing the request described in this section.

4 (e) All information supplied to the commissioner in connection  
5 with the application for licensure shall be held confidential by the  
6 commissioner.

7 60010. An applicant or licensed provider shall notify the  
8 department within 30 days after a change in the information  
9 specified in paragraph (2) of subdivision (b) of Section 60006 or  
10 in subdivision (a), (c), or (e) of Section 60008, or any other  
11 information as required, by rule, by the commissioner.

12 60011. (a) Except as otherwise provided in subdivisions (b)  
13 and (c), the commissioner shall issue a certificate of licensure as  
14 a provider to a person that complies with this article.

15 (b) The commissioner may deny registration for either licensure  
16 for any of the following:

17 (1) An application that contains information that is materially  
18 erroneous or incomplete.

19 (2) ~~An~~ *The applicant, an officer, director, or owner of the*  
20 *applicant has been convicted of a crime, or suffered a civil*  
21 *judgment, involving fraud, deceit, or dishonesty or the violation*  
22 *of state or federal securities or consumer protection laws.*

23 (3) *An applicant has made any false statement or representation*  
24 *to the commissioner.*

25 (4) *An applicant is or becomes insolvent.*

26 (5) *An applicant refuses to reasonably comply with an*  
27 *investigation or examination of the debt settlement service provider*  
28 *by the commissioner.*

29 (6) *An applicant has improperly withheld, misappropriated, or*  
30 *converted funds received in the course of doing business.*

31 (7) *An applicant has used fraudulent, coercive, or dishonest*  
32 *practices, or demonstrated incompetence regarding debt settlement*  
33 *services, or financial irresponsibility in this state or elsewhere.*

34 (8) *An applicant has shown to have engaged in a pattern of*  
35 *failing to perform services promised.*

36 (c) The commissioner shall deny licensure if the application is  
37 not accompanied by the fee established by the commissioner.

38 60012. (a) The commissioner shall approve or deny an initial  
39 license as a provider within 60 days after a complete application  
40 is filed. In connection with a request pursuant to subdivision (h)



1 of Section 60008 for additional information, the commissioner  
2 may extend the 60-day period for not more than 45 days. Within  
3 10 business days after denying an application, the commissioner,  
4 in a record, shall inform the applicant of the reasons for the denial.

5 (b) If the commissioner denies an application for licensure as  
6 a provider or does not act on an application within the time  
7 prescribed in subdivision (a), the applicant may appeal and request  
8 a hearing pursuant to the California Administrative Procedure Act  
9 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
10 Division 3 of Title 2 of the Government Code).

11 60013. (a) A provider shall obtain a renewal of its license  
12 annually.

13 (b) An application for renewal of licensure as a provider shall  
14 be in a form prescribed by the commissioner and be filed no fewer  
15 than 30 and no more than 60 days before the license expires.

16 (c) Application for renewal shall be accompanied by the fee  
17 established by the commissioner in an amount reasonably necessary  
18 for the administration of this division. The commissioner may, if  
19 necessary, also include a surcharge to the licensure renewal fee  
20 that shall be determined by the amount of the deficit, if any, for  
21 reasonable expenses and costs incurred greater than the revenue  
22 collected, in the administration of this division in the year  
23 immediately preceding the renewal year. The surcharge shall be  
24 charged to providers on a pro rata share based on the number of  
25 California residents enrolled in the provider's debt settlement  
26 services program.

27 (d) The commissioner, by rule, may require a provider to submit  
28 specific business information with the annual renewal application.

29 60014. A person or entity licensed as a provider under this  
30 division shall be exempt from the requirements of Division 3  
31 (commencing with Section 12000), *except to the extent the person*  
32 *is performing services and activities governed by Section 12000.*

33  
34 CHAPTER 5. REGULATIONS  
35

36 60015. A provider that is required to be licensed under this  
37 division shall maintain a toll-free communication system, staffed  
38 at a level that reasonably permits an individual to speak to a debt  
39 specialist or customer service representative, as appropriate, during  
40 ordinary business hours.

~~60016. (a) Before providing debt settlement services, a licensed provider shall give the individual an itemized list of goods and services and the charges for each. The list shall be in no less than 12 point font.~~

~~(b) A provider shall not furnish debt settlement services unless the provider has prepared a financial analysis.~~

~~(c) A written good-faith estimate of the length of time it will take to complete the program and a statement of the total amount of debt owed to each creditor included in the program shall be provided to the individual. The estimate shall be provided prior to the first payment made by the individual to creditors pursuant to the program.~~

~~(d) Before an individual assents to an agreement to engage in a program, the provider shall inform the individual in writing of all of the following:~~

*60016. (a) Before an individual assents to an agreement to engage in a program, the provider shall do all of the following:*

*(1) Prepare and provide a written financial analysis specific to the individual.*

*(2) Provide a written good-faith estimate of the length of time it will take to complete the program and a statement of the total amount of debt owed to each creditor included in the program. The estimate shall include a statement of the monthly savings goals for the individual to complete the program.*

*(3) Based upon the completed financial analysis, make a determination that the individual is qualified for a debt settlement program and that the individual can reasonably meet the requirements of the program.*

*(4) Inform the individual in writing of all of the following:*

~~(1)~~

*(A) The name and business address of the provider.*

~~(2)~~

*(B) That some programs are not suitable for some individuals.*

~~(3)~~

*(C) That the conduct of a program may affect the individual's credit rating or credit scores.*

~~(4)~~

*(D) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation.*

1     ~~(5)~~

2     (E) That unless the individual is insolvent, if a creditor settles  
3 for less than the full amount of the debt, the program may result  
4 in the creation of taxable income to the individual, even though  
5 the individual does not receive any money.

6     ~~(6)~~

7     (F) That specific results cannot be predicted or guaranteed.

8     ~~(7)~~

9     (G) That a program requires an individual to meet certain  
10 savings goals in order to maximize settlement results.

11    ~~(8)~~

12    (H) That a provider, who is not otherwise authorized or  
13 professionally licensed, does not provide accounting or legal advice  
14 to individuals.

15    ~~(9)~~

16    (I) That a provider does not receive compensation from an  
17 individual's creditors, banks, or third-party collection agencies.

18    ~~(10)~~

19    (J) That a provider cannot force negotiations or settlements with  
20 creditors but will advocate solely on behalf of an individual.

21    ~~(11)~~

22    (K) That if an individual terminates an agreement pursuant to  
23 paragraph (1) of subdivision (b) of Section 60019, no additional  
24 fees will be due.

25    (L) *That the use of debt settlement services may not stop a*  
26 *creditor from filing or pursuing a lawsuit against an individual.*

27    (M) *That the consumer may owe fees upon signing an agreement*  
28 *whether or not any debts are reduced under the program.*

29    ~~(e)~~

30    (b) The provider shall insert the following statement, in not less  
31 than 10-point type, in its debt settlement program agreements:

32  
33    "Complaints related to this agreement may be directed to the  
34 Department of ~~Corporations.~~ *Corporations by telephone and its*  
35 *Internet Web site address.*"

36  
37    60017. (a) For purposes of this section, the following  
38 definitions apply:

1 (1) “Consumer” means an individual who seeks or obtains goods  
2 or services that are used primarily for personal, family, or  
3 household purposes.

4 (2) “Federal act” means the Electronic Signatures in the Global  
5 and National Commerce Act (15 U.S.C. Sec.7001 et seq.).

6 (b) A provider may satisfy the requirements of Section 60016,  
7 60019, 60020, or 60024 by means of the Internet or other electronic  
8 means if the provider obtains a consumer’s consent in the manner  
9 provided by Section 101(c)(1) of the federal act (15 U.S.C. Sec.  
10 7001(c)(1)).

11 (c) The disclosures and materials required by Section 60016,  
12 60019, 60020, or 60024 shall be presented in a form that is capable  
13 of being *printed and* accurately reproduced for later reference.

14 (d) With respect to disclosure by means of an Internet Web site,  
15 the disclosure of the information required by subdivision (d) of  
16 Section 60016 shall appear on one or more screens that satisfy  
17 both of the following:

18 (1) The screen contains no other information.

19 (2) An individual shall be able to see the screen before  
20 proceeding to assent to formation of a program.

21 (e) At the time of providing the materials and agreement required  
22 by subdivisions (a), (b), and (c) of Section 60016, Section 60019,  
23 and Section 60024, a provider shall inform the individual that upon  
24 electronic, telephonic, or written request, it will send the individual  
25 a written copy of the materials, and shall comply with a request  
26 as provided in subdivision (f).

27 (f) If a provider is requested, before the expiration of 90 days  
28 after a program is completed or terminated, to send a written copy  
29 of the materials required by subdivisions (b) and (c) of Section  
30 60016, Section 60019, and Section 60024, the provider shall send  
31 them at no charge within three business days after the request, but  
32 the provider shall not be required to comply with a request more  
33 than once per calendar month or if it reasonably believes the request  
34 is made for purposes of harassment. If a request is made more than  
35 90 days after a program is completed or terminated, the provider  
36 shall send within a reasonable time a written copy of the materials  
37 requested.

38 ~~(g) Subject to subdivision (h), if a consumer who has consented~~  
39 ~~to electronic communication in the manner provided by Section~~  
40 ~~101(e) of the federal act (15 U.S.C. Sec. 7001(e)) withdraws~~

1 consent as provided in the federal act, a provider may terminate  
2 its agreement with the consumer.

3 ~~(h) If a provider wishes to terminate an agreement with a~~  
4 ~~consumer pursuant to subdivision (g), it shall notify the consumer~~  
5 ~~that it will terminate the agreement unless the consumer, within~~  
6 ~~30 days after receiving the notification, consents to electronic~~  
7 ~~communication in the manner provided in Section 101(e) of the~~  
8 ~~federal act (15 U.S.C. Sec. 7001(e)).~~

9 60018. A provider shall maintain an Internet Web site and shall  
10 disclose all of the following on the home page of its Internet Web  
11 site or on a page that is clearly and conspicuously connected to  
12 the home page by a link that clearly reveals its contents:

13 (a) Its name, business address, telephone number, and e-mail  
14 address, if any.

15 (b) Its license number under this division and a link to the  
16 department's Internet Web site.

17 (c) All other disclosures required by law.

18 60019. (a) An agreement under this division shall satisfy all  
19 of the following requirements:

20 (1) Be in writing, dated, and signed by the individual.

21 (2) Include the name of the individual and the address where  
22 the individual resides.

23 (3) Include the name, business address, and telephone number  
24 of the provider *and, if this does not include a street address in*  
25 *California, the name and address of its California agent for service*  
26 *of process.*

27 (4) Be delivered to the individual immediately upon formation  
28 of the agreement. For purposes of this paragraph, delivery of an  
29 electronic record occurs when it is *sent to the individual and* made  
30 available in a format in which the individual may retrieve, save,  
31 and print, and the individual is notified that it is available.

32 (5) Include all disclosures required under Section 60016.

33 (6) Disclose all of the following:

34 (A) The list required under subdivision (a) of Section 60016.

35 (B) The amount, and method of determining the amount, of all  
36 fees, individually itemized, to be paid by the individual.

37 (C) How the provider will comply with its obligations under  
38 subdivision (a) of Section 60024.

39 (D) That the individual may contact the commissioner with any  
40 questions or complaints regarding the provider, ~~provided the~~

1 ~~individual first attempts to address any and all grievances with the~~  
2 ~~provider pursuant to Section 60026.~~

3 *(7) Display the following provisions, which shall appear*  
4 *prominently and clearly on the front page:*

5 *(A) The total amount of the debt brought into the program.*

6 *(B) The setup fee amount to be paid by the individual, if any.*

7 *(C) The monthly fee to be paid by the individual, if any.*

8 *(D) The estimated number of months for which a monthly fee*  
9 *is required by the agreement.*

10 *(E) An estimate of the total amount of fees reasonably*  
11 *anticipated to be paid by the individual over the term of the*  
12 *agreement, as applicable.*

13 *(F) The total amount of fees that may be charged under the*  
14 *contract.*

15 (b) An agreement under this division shall provide the following:

16 (1) That the individual has a right to terminate the agreement  
17 at any time by giving the provider written or electronic notice.  
18 Termination of the agreement becomes effective immediately upon  
19 receipt by the provider, at which time all powers of attorney granted  
20 by the individual to the provider are revoked and ineffective.

21 (2) That the individual can cancel an agreement and receive a  
22 full refund of any moneys paid to the provider before midnight of  
23 the ~~third~~ *fifth* business day after the individual assents to it. Notice  
24 of cancellation is effective upon proof of sending ~~such~~ *the* notice  
25 prior to the deadline. *Upon cancellation the provider shall refund*  
26 *all fees no later than 10 business days from the date of*  
27 *cancellation.*

28 (3) That any power of attorney only authorizes the provider, as  
29 reasonably necessary, to communicate with creditors for the  
30 purposes of negotiating settlement offers and to initiate transfer  
31 of funds in accordance with Section 60025.

32 (4) That the provider shall notify the individual within three  
33 business days after learning of a creditor's decision to cease final  
34 negotiation with the provider. This notification shall include both  
35 of the following:

36 (A) The identity of the creditor.

37 (B) The right of the individual to modify or terminate the  
38 agreement.

39 (C) The terms and conditions of the agreement modification  
40 process.

1 (c) An agreement shall not do any of the following:

2 (1) Provide for application of the law of any jurisdiction other  
3 than ~~the United States and~~ this state.

4 (2) Except as permitted by the California Arbitration Act (Title  
5 9 (commencing with Section 1280) of Part 3 of the Code of Civil  
6 Procedure), contain a provision that modifies or limits otherwise  
7 available forums or procedural rights, including the right to trial  
8 by jury, that are generally available to the individual under law  
9 other than as provided in this division.

10 (3) Contain a provision that restricts the individual's remedies  
11 under this division or under another law of this state.

12 (4) Contain a provision that does ~~either~~ *any* of the following:

13 (A) Limits or releases the liability of any person for not  
14 performing the agreement or for violating this division.

15 (B) Indemnifies any person for liability arising under the  
16 agreement or this division.

17 (C) *Require the individual to be responsible for payment of*  
18 *attorney's fees of the provider.*

19 (d) All rights and obligations specified in subdivision (b) exist  
20 even if not provided in the agreement. A provision in an agreement  
21 that violates subdivision (b) or (c) is void.

22 60020. If a provider communicates with an individual primarily  
23 in a language other than English, the provider shall furnish a  
24 translation into the other language of the disclosures and documents  
25 required by this division.

26 60021. (a) The total of all fees charged by a provider shall not  
27 exceed 20 percent of the principal amount of debt which includes  
28 a maximum of ~~a 5-percent setup fee~~ *total set up fee specific to the*  
29 *individual of up to 5 percent.* The provider's total fees must be  
30 spread over at least half the length of the program, unless  
31 accelerated by the individual or until offers of settlement by  
32 creditors are obtained on at least half of the debts enrolled to *the*  
33 provider. In no case shall total fees exceed 20 percent of the  
34 principal debt, and the total fees plus settlements cannot exceed  
35 the principal amount of the debt. *However, this section shall not*  
36 *preclude an individual from voluntarily prepaying fees earned by*  
37 *the provider.*

38 (b) A provider shall not impose, directly or indirectly, a fee or  
39 other charge on an individual or receive money from or on behalf

1 of an individual for debt settlement services except as permitted  
2 by this section.

3 (c) A provider shall not impose charges or receive payment for  
4 debt settlement services until the provider and the individual have  
5 signed an agreement that complies with Sections 60016 and 60019,  
6 60019, and 60020.

7 (d) If a payment to a provider by an individual under this  
8 division is dishonored, a provider may impose a reasonable charge  
9 on the individual, not to exceed the amount permitted by paragraph  
10 (1) of subdivision (a) of Section 1719 of the Civil Code: *fifteen*  
11 *dollars (\$15). Any charge pursuant to this subdivision shall be*  
12 *limited to one per payment due.*

13 60022. (a) If a provider imposes a fee or other charge or  
14 receives money or other payments not authorized by Section 60021,  
15 the agreement is void and the individual ~~shall first seek a remedy~~  
16 ~~pursuant to Section 60026, but, if no remedy is obtained,~~ may  
17 recover as provided in Section 60032.

18 (b) If a provider is not licensed as required by this division when  
19 an individual assents to an agreement, the agreement shall be void.

20 (c) If an agreement is void pursuant to subdivision (a) or (b),  
21 the provider shall not have a claim against the individual for breach  
22 of contract or for restitution.

23 (d) Subdivision (a) shall not apply to an error in computation  
24 *in the amount of an authorized fee* if (1) the provider shows by a  
25 preponderance of evidence that the violation was not willful and  
26 resulted from a ~~good-faith~~ *good faith* error, notwithstanding the  
27 maintenance of procedures reasonably adapted to avoid that error,  
28 and (2) within 60 days of discovering the error the provider notifies  
29 the individual of the error and makes whatever adjustments in the  
30 account are necessary to correct the error.

31 60023. If an individual who has entered into a fee agreement  
32 fails for 60 days to make payments required by the agreement, a  
33 provider may terminate the agreement. *The provider may not earn*  
34 *additional fees on or after termination.*

35 60024. (a) A provider shall provide the accounting required  
36 by subdivision (b), as follows:

37 (1) Upon settlement of a debt.

38 (2) Within five business days after a request by an individual,  
39 but the provider shall not be required to comply with more than  
40 one request in any calendar month.



1 (3) Upon cancellation or termination of an agreement.

2 (b) A provider, in a record, shall provide the following to each  
3 individual for whom it has established a program if a creditor has  
4 agreed to accept as payment in full an amount less than the  
5 principal amount of the debt owed by the individual:

6 (1) The total amount and terms of the settlement.

7 (2) The amount of the debt when the individual assented to the  
8 program.

9 (3) The amount of the debt when the creditor agreed to the  
10 settlement.

11 (4) The fee, and the calculation of the fee, if any, charged to the  
12 individual based on a percentage of the settlement of debt or based  
13 on a percentage of the savings realized by the individual.

14 (c) A provider shall maintain records for each individual for  
15 whom it provides debt settlement services for ~~three~~ five years after  
16 the final payment made by the individual. A provider shall produce  
17 a copy of those records and provide them to the individual within  
18 a reasonable time after a request for the records. The provider may  
19 use electronic or other means of storage of the records.

20 *(d) A provider shall provide the individual with a copy of the*  
21 *written documentation from the creditor of a debt that has been*  
22 *successfully settled, when available to the provider.*

23 60025. (a) A provider shall not, directly or indirectly, do any  
24 of the following:

25 *(1) Exercise or attempt to exercise a power of attorney not*  
26 *authorized by the agreement.*

27 ~~(1)~~

28 (2) Exercise or attempt to exercise a power of attorney after an  
29 ~~individual has terminated an agreement.~~ *agreement has been*  
30 *cancelled or terminated.*

31 ~~(2)~~

32 (3) Initiate a transfer of funds to or from an individual's bank  
33 or other financial institution, unless the transfer is one of the  
34 following:

35 (A) A return of money to the individual.

36 (B) Before termination of an agreement, properly authorized  
37 by the agreement and this division, for payment of a fee.

38 (C) A transaction that has been expressly approved in writing,  
39 or recorded statement, by the individual after the transaction has  
40 been presented to the individual for approval.

1 (D) A transaction expressly directed by the individual to the  
2 bank or financial institution.

3 ~~(3)~~

4 (4) Settle a debt or lead an individual to believe that a payment  
5 to a creditor is in settlement of a debt to the creditor unless, at the  
6 time of settlement, the individual or provider receives a certification  
7 or confirmation by the creditor that the payment is in full  
8 settlement, or is part of a payment plan that is in full settlement,  
9 of the debt.

10 ~~(4)~~

11 (5) Make a representation that:

12 (A) The provider will furnish money to pay bills or prevent  
13 attachments.

14 (B) Payment of a certain amount will guarantee satisfaction of  
15 a certain amount or range of indebtedness.

16 (C) Participation in a program will or may prevent litigation,  
17 garnishment, attachment, repossession, foreclosure, eviction, or  
18 loss of employment.

19 ~~(5)~~

20 (6) Represent that it is a not-for-profit entity unless it is  
21 organized and properly operating as a not-for-profit entity under  
22 the law of the state in which it was formed or that it is a tax-exempt  
23 entity unless it has received certification of tax-exempt status from  
24 the Internal Revenue Service.

25 ~~(6)~~

26 (7) Knowingly employ an unfair, unconscionable, or deceptive  
27 act or practice, including the knowing omission of any material  
28 information.

29 ~~(7)~~

30 (8) Fail to respond to and research any complaint initiated by  
31 an individual within 20 days of receipt of the complaint and resolve  
32 each complaint in a prompt and reasonable manner.

33 ~~(8)~~

34 (9) Require an individual participating in a debt settlement  
35 program to utilize additional ancillary services.

36 ~~(9)~~

37 (10) Receive financial incentives or additional compensation  
38 based on the outcome of the debt settlement program in excess of  
39 the fee cap.

40 ~~(10)~~

1 (11) Pay referral fees to creditors or potential creditors who  
2 refer new clients to the provider.

3 (b) If a provider furnishes debt settlement services to an  
4 individual, the provider may not, directly or indirectly, do any of  
5 the following:

6 (1) Purchase a debt or obligation of the individual.

7 (2) Receive from or on behalf of the individual either of the  
8 following:

9 (A) A promissory note or other negotiable instrument other than  
10 a check ~~or a demand draft~~.

11 (B) A postdated check ~~or demand draft~~.

12 (3) Lend money or provide credit to the individual, except as a  
13 deferral of a fee at no additional expense to the individual, or  
14 advance a settlement payment for the individual at no additional  
15 expense to the individual.

16 (4) Obtain a mortgage or other security interest from any person  
17 in connection with the services provided to the individual.

18 (5) Force or otherwise require an individual to deposit his or  
19 her funds into a specific financial institution. A provider must also  
20 state to the individual that the individual is free to choose any  
21 FDIC-insured financial institution. However, this shall not prevent  
22 a provider from furnishing the individual with a list of  
23 FDIC-insured financial institutions from which the individual may  
24 choose or explaining the benefits of using any particular financial  
25 institution.

26 (6) Except as permitted by federal and California law, disclose  
27 the identity or identifying information of the individual or the  
28 identity of the individual's creditors, except to:

29 (A) The commissioner, upon proper demand.

30 (B) A creditor of the individual, to the extent necessary to secure  
31 the cooperation of the creditor in a program.

32 (C) The extent necessary to administer the program.

33 (7) Except as otherwise provided in Section 60021, provide the  
34 individual less than the full benefit of a compromise of a debt  
35 arranged by the provider.

36 (8) Charge the individual for or provide credit or other insurance,  
37 coupons for goods or services, membership in a club, access to  
38 computers or the Internet, or any other matter not directly related  
39 to debt settlement services or educational services concerning  
40 personal finance.

1 (9) Furnish legal advice or perform legal services, unless the  
2 person furnishing that advice to or performing those services for  
3 the individual is licensed to practice law.

4 (10) Advise individuals to stop payment on any of the accounts  
5 being handled by the provider.

6 (11) Hold an individual's funds in trust.

7 (12) *Include in any debt settlement services agreement any*  
8 *secured debt.*

9 (c) This division does not authorize any person to engage in the  
10 practice of law.

11 60026. Each provider shall establish an internal formal  
12 complaint policy that creates a process for the provider to receive,  
13 review, and address or resolve formal complaints internally. The  
14 availability of this process shall be communicated in writing to  
15 individuals enrolled in the provider's program. This policy shall  
16 include a provision that all consumers who file a formal complaint  
17 shall receive a response from the provider within 20 days from the  
18 provider's receipt of the complaint. The provider shall maintain a  
19 file for each formal complaint that documents the complaint, its  
20 handling, and the resolution, if any, of the complaint and the  
21 provider shall disclose the file to the commissioner upon request.

22 60027. No later than 30 days after a provider has been served  
23 with notice of a civil action for violation of this division by or on  
24 behalf of an individual who resides in this state at either the time  
25 of an agreement or the time the notice is served, the provider shall  
26 notify the commissioner in a record that it has been sued.

27 60028. Any advertising ~~conducted by the provider concerning~~  
28 *debt settlement services* shall not contain any false, misleading, or  
29 deceptive statement or omit to state any fact necessary to make  
30 the statements made, in light of circumstances under which they  
31 are made, not false, misleading, or deceptive.

32 60029. (a) The commissioner may act on his or her own  
33 initiative or in response to complaints and may receive complaints,  
34 take action to obtain voluntary compliance with this division, refer  
35 cases to the Attorney General, or any other law enforcement  
36 agency, and seek or provide remedies as provided in this division.

37 (b) The commissioner may investigate and examine once every  
38 two years, in this state or elsewhere, by subpoena or otherwise,  
39 the activities, books, accounts, and records of a person that provides  
40 or offers to provide debt settlement services, or a person to which

1 a provider has delegated its obligations under an agreement or  
2 under this division, to determine compliance with this division.  
3 Information that identifies individuals who have agreements with  
4 the provider shall not be disclosed to the public. In connection  
5 with the investigation, the commissioner may do either of the  
6 following:

7 (1) Charge the person the reasonable expenses necessarily  
8 incurred to conduct the examination.

9 (2) Require or permit a person to file a statement under oath as  
10 to all the facts and circumstances of a matter to be investigated.

11 (c) The commissioner may enter into cooperative arrangements  
12 with any other federal or state agency having authority over  
13 providers and may exchange with any of those agencies  
14 information about a provider, including information obtained  
15 during an examination of the provider.

16 60030. (a) The commissioner may enforce this division and  
17 rules adopted under this division by taking one or more of the  
18 following actions:

19 (1) Ordering a provider or a director, employee, or other agent  
20 of a provider to desist and refrain from any violations.

21 (2) Ordering a provider or a person that has caused a violation  
22 to correct the violation, including making restitution of money or  
23 property to a person aggrieved by a violation.

24 (3) Imposing an administrative penalty not exceeding two  
25 thousand five hundred dollars (\$2,500) for each violation on a  
26 provider or a person that has caused a violation.

27 (4) Prosecuting a civil action to do either or both of the  
28 following:

29 (A) Enforce an order.

30 (B) Obtain restitution or an injunction or other equitable relief,  
31 or both.

32 (b) If a person knowingly violates or knowingly authorizes,  
33 directs, or aids in the violation of a final order issued under  
34 paragraph (1) or (2) of subdivision (a), the commissioner may  
35 impose an administrative penalty not exceeding ten thousand  
36 dollars (\$10,000) for each violation.

37 (c) The commissioner may recover the reasonable costs of  
38 enforcing this division under subdivisions (a) and (b), including  
39 attorney's fees based on the hours reasonably expended and the

1 hourly rates for attorneys of comparable experience in the  
2 community.

3 (d) In determining the amount of a penalty to impose under  
4 subdivision (a) or (b), the commissioner shall consider the  
5 seriousness of the violation, the good faith of the violator, any  
6 previous violations by the violator, the deleterious effect of the  
7 violation on the public, the net worth of the violator, and any other  
8 factor the commissioner considers relevant to the determination  
9 of the civil penalty.

10 (e) Any penalties or other amounts recovered by the  
11 commissioner under this section shall be paid into the State  
12 Corporations Fund.

13 60031. (a) In this section, “insolvent” means the following:

14 (1) The inability to pay debts in the ordinary course of business  
15 other than as a result of ~~good-faith~~ *good faith* dispute.

16 (2) Being unable to pay debts as they become due.

17 (3) Being insolvent within the meaning of the federal bankruptcy  
18 law (11 U.S.C. Sec. 101 et seq.).

19 (b) The commissioner may suspend, revoke, or deny renewal  
20 of a provider’s license if:

21 (1) A fact or condition exists that, if it had existed when the  
22 licensee applied for licensure as a provider, would have been a  
23 reason for denying the license.

24 (2) The provider has committed a material violation of this  
25 division or a rule or order of the commissioner under this division.

26 (3) The provider is insolvent.

27 (4) The provider or an employee or affiliate of the provider has  
28 refused to permit the commissioner to make an examination  
29 authorized by this division, failed to comply with paragraph (2)  
30 of subdivision (b) of Section 60029 within 15 days after request,  
31 or made a material misrepresentation or omission in complying  
32 with paragraph (2) of subdivision (b) of Section 60029.

33 (5) The provider has not responded within a reasonable time  
34 and in an appropriate manner to communications from the  
35 commissioner.

36 (6) The provider has been convicted of a crime that involves  
37 dishonesty, fraud, or deceit, and that is substantially related to the  
38 qualifications, functions, or duties of the licensed activity.

39 (c) If the commissioner suspends or revokes a provider’s license,  
40 the provider may appeal and request a hearing pursuant to the

1 California Administrative Procedure Act (Chapter 3.5  
2 (commencing with Section 11340) of Part 1 of Division 3 of Title  
3 2 of the Government Code).

4 60032. (a) If an agreement is void pursuant to subdivision (a)  
5 or (b) of Section 60022, the individual may recover in a civil action  
6 all money paid by or on behalf of the individual pursuant to the  
7 agreement, in addition to the recovery under subdivision (b).

8 (b) An individual with respect to whom a provider violates this  
9 division may recover the following in a civil action from the  
10 provider and any person that caused the violation:

11 (1) Compensatory damages for injury caused by the violation.

12 (2) Reasonable attorney's fees and costs.

13 ~~(c) A provider shall not be liable under this section for a~~  
14 ~~violation of this division if the provider proves that the violation~~  
15 ~~was not willful and resulted from a good-faith error.~~

16 60033. If an act or practice of a provider violates both this  
17 division and Chapter 5 (commencing with Section 17200) of Part  
18 2 of Division 7 of the Business and Professions Code, an individual  
19 may not recover under both for the same act or practice.

20 60034. (a) An action brought under this division shall be  
21 commenced within three years after the latest of one of the  
22 following:

23 (1) ~~The individual's last transmission of money to a provider~~  
24 ~~by or on behalf of the individual .~~

25 (2) The date on which the individual discovered or reasonably  
26 should have discovered the facts giving rise to the individual's  
27 claim.

28 (b) The period prescribed in paragraph (2) of subdivision (a)  
29 shall be tolled during any period during which the provider or, if  
30 different, the defendant has materially ~~and willfully~~ misrepresented  
31 information required by this division to be disclosed to the  
32 individual, if the information so misrepresented is material to the  
33 establishment of the liability of the defendant under this division.

34 60035. This division shall not apply to a debt settlement  
35 agreement between an individual and a provider for the  
36 performance of debt settlement services that was entered into prior  
37 to the operative date of this division.

38 60036. The commissioner may make general rules and  
39 regulations and specific rulings, demands, and findings for the  
40 enforcement of this division.

1     60037. Any person, including a partner or officer of an entity  
2 that is a licensee, who willfully violates any provision of this  
3 division or who willfully violates any rule or order adopted  
4 pursuant to this division, shall, upon conviction, be punished by  
5 a fine of not more than ten thousand dollars (\$10,000), or by  
6 imprisonment in a county jail for not more than one year, or by  
7 both that fine and imprisonment. However, no person may be  
8 imprisoned for the violation of any rule or order unless he or she  
9 had knowledge of the rule or order.

10     60038. A provider shall act in good faith in all matters under  
11 this division.

12     60039. This division shall become operative on January 1,  
13 2011.

14  
15                   CHAPTER 6. MISCELLANEOUS  
16

17     60050. The provisions of this division are severable. If any  
18 provision of this division or its application is held invalid, that  
19 invalidity shall not affect other provisions or applications that can  
20 be given effect without the invalid provision or application.

21     SEC. 2. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.